

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
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6 UNITED STATES OF AMERICA,)
7 Plaintiff,) Case No. 5:18CR94
8 vs.)
9 DONTÉ L. GIBSON,)
10 Defendant.)
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13 TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE
14 JUDGE PATRICIA A. GAUGHAN, JUDGE OF SAID COURT,
15 ON MONDAY, SEPTEMBER 24TH, 2018,
16 COMMENCING AT 11:00 O'CLOCK A.M.
17

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21 Court Reporter: GEORGE J. STAUDUHAR
22 801 W. SUPERIOR AVE.,
23 SUITE 7-184
24 CLEVELAND, OHIO 44113
25 (216) 357-7128

GOVERNMENT
EXHIBIT

2

5:18CR94

1 **APPEARANCES:**

2 On behalf of the Government:

3 OFFICE OF THE U.S. ATTORNEY - AKRON
4 BY: MARK BENNETT, AUSA
5 208 Federal Building
6 2 South Main Street
7 Akron, OH 44308

8 and

9 OFFICE OF THE U.S. ATTORNEY - CLEVELAND
10 BY: DANIELLE K. ANGELI, AUSA
11 801 Superior Ave, W, Suite 400
12 Cleveland, OH 44113

13 On behalf of the Defendant:

14 RHONDA L. KOTNIK
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16 333 South Main Street
17 Akron, OH 44308

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P R O C E E D I N G S

THE COURT: We are here in the matter of United States of America versus Donte L. Gibson, Case No. 18CR94. Present in Court is Mr. Gibson. Is that correct, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Represented by his attorney, Ms. Rhonda Kotnik; on behalf of the Government, Mr. Mark Bennett.

MR. BENNETT: Good afternoon, your Honor.

THE COURT: Good afternoon. And Ms. Dannie Angeli.

MS. ANGELI: Good afternoon, your Honor.

THE COURT: And also seated at counsel table is Agent Jennifer Conner.

MR. BENNETT: Yes, your Honor.

THE COURT: Sir, it is my understanding that you do wish to withdraw your formerly entered plea of not guilty to Counts 1 and 13 and enter a plea of guilty.

Is that correct?

THE DEFENDANT: Yes.

THE COURT: Sir, I must ask you a series of questions. If at any time you don't understand, please let me know, and of course, you can consult with your attorney at any time. I will give you the time and the

1 privacy to do so.

2 How far in school did you go, sir?

3 THE DEFENDANT: I went to tenth, but then I
4 eventually got my diploma.

5 THE COURT: You got your GED?

6 THE DEFENDANT: No, diploma.

7 THE COURT: You got your diploma?

8 THE DEFENDANT: Yes.

9 THE COURT: How old are you right now?

10 THE DEFENDANT: I am 40.

11 THE COURT: Are you a citizen of the
12 United States?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you presently under the
15 influence of any alcohol or any narcotic drug?

16 THE DEFENDANT: No.

17 THE COURT: Are you on probation, parole,
18 supervised release, community control, or anything of
19 that nature for any offense?

20 THE DEFENDANT: Yes.

21 THE COURT: Which would that be.

22 THE DEFENDANT: PRC due to my release from
23 incarceration, and then they gave me probation for prior
24 — for a case when I came home.

25 THE COURT: Okay. So, sir, you are on

1 post-release control for one case and on probation for
2 another case?

3 THE DEFENDANT: Yes. Because it was a petty
4 case, yes.

5 THE COURT: Okay. Do you understand, sir,
6 by pleading guilty here you may be found to be in
7 violation of probation or post-release control or both,
8 and a sentence can be imposed in those cases and run
9 consecutive to anything I give you here.

10 Do you understand that?

11 THE DEFENDANT: Yes. I understand what you
12 are saying.

13 THE COURT: And sir, you understand what the
14 word "consecutive" means?

15 THE DEFENDANT: Yes, I do, Ma'am.

16 (Discussion held off the record between the
17 Defendant and his counsel.)

18 THE COURT: All right. Are you — for the
19 record, Mr. Gibson consulted with his attorney.

20 And sir, you take as much time as you need.
21 Would you like more time here, or are you ready?

22 THE DEFENDANT: Go ahead.

23 THE COURT: All right. Are you satisfied
24 with the representation of your attorney?

25 THE DEFENDANT: Yes.

1 THE COURT: And sir, are you presently on
2 any medication?

3 THE DEFENDANT: No.

4 THE COURT: You have certain basic
5 constitutional rights, which I will now outline for you.
6 These are the rights you are giving up by pleading
7 guilty.

8 Do you understand that you have a right to a
9 trial by a jury, or you can have your case tried by me
10 with the consent of the Government and the approval of
11 this Court.

12 THE DEFENDANT: No. I don't understand
13 that.

14 THE COURT: All right. All right. Let me
15 explain it. Sir, what I am doing is, I am going over all
16 of the constitutional rights that you have. By pleading
17 guilty, you are giving up these rights, so it is my duty
18 to go over the rights that you are giving up. The first
19 right you have is to go to trial.

20 You are giving up that right by pleading
21 guilty, and I further explain that a trial can be by a
22 jury of your peers, or it could be by me. Go ahead, you
23 could talk to her.

24 (Discussion held off the record between the
25 Defendant and his counsel.)

1 THE DEFENDANT: Okay. Go ahead.

2 THE COURT: Do you understand that? That
3 you are giving —

4 (Discussion held off the record between the
5 Defendant and his counsel.)

6 THE DEFENDANT: Go ahead.

7 THE COURT: Do you understand you are giving
8 up your right to a trial —

9 THE DEFENDANT: Yes.

10 THE COURT: — by a jury or by a Judge?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand, sir, that you
13 have a right to confront and cross-examine the
14 Government's witnesses, and again, this is the right you
15 are giving up. Understood?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that you have
18 a right to subpoena or bring in witnesses in your own
19 defense.

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that you have
22 a right to an attorney throughout all proceedings.

23 (Discussion held off the record.)

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand, sir, that had

1 you decided to go to trial you would have had the right
2 to take the witness stand and testify, or you would have
3 had the right not to take the witness stand and testify.

4 And if you had gone to trial and if you had
5 decided not to take the witness stand and testify, nobody
6 would have been permitted to comment on that fact.

7 So in other words, Mr. Bennett, Ms. Angeli,
8 couldn't get up in closing arguments and say, well, he
9 must be guilty because he didn't bother to tell us
10 anything on the witness stand.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: You are presumed innocent unless
14 you are proven guilty beyond a reasonable doubt. Do you
15 understand, sir, that you don't have to prove anything at
16 all? The burden of proof is on the Government.

17 Understood?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand, sir, that
20 by pleading guilty you are giving up all of these
21 constitutional rights that I just went over with you?

22 THE DEFENDANT: Yes.

23 THE COURT: Sir, I have before me a document
24 that is entitled "Plea Agreement." I am looking on page
25 13. Your name is typewritten, a signature above it with

1 today's date.

2 Did you sign and date this today?

3 THE DEFENDANT: Yes.

4 THE COURT: And did you initial the bottom
5 of each page?

6 THE DEFENDANT: Yes.

7 THE COURT: And, sir, did you initial the
8 bottom of each page of the attachment, the factual
9 basis?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you read it, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: And did you go over it with
14 Ms. Kotnik?

15 THE DEFENDANT: Yes.

16 THE COURT: Is there anything in here you do
17 not understand.

18 THE DEFENDANT: I wanted to ask you about
19 the 11(c) (1) (C). I didn't —

20 THE COURT: Okay. I am going to go over
21 that with you, absolutely.

22 THE DEFENDANT: Okay.

23 THE COURT: I am going to discuss that with
24 you, and then, after I do that, I will ask you again if
25 you have any questions. So because I am going to go over

1 that with you, do you have any other questions, anything
2 else you don't understand?

3 THE DEFENDANT: Yes. How they came up with
4 my level to be like a 36, like —

5 THE COURT: Okay.

6 THE DEFENDANT: How — that's kind of high
7 for my conduct due to, you know, what the Government put
8 in black and white, you know, what I am saying? So I
9 don't understand how my level is so high.

10 THE COURT: Okay. Thank you. That's
11 another thing I am going to go over with you.

12 Anything else?

13 THE DEFENDANT: Those are my two main
14 concerns.

15 THE COURT: Okay. So this is what I am
16 going to do, Mr. Gibson, I am going to go over some of
17 the terms in the agreement, especially your two concerns.
18 Anything that I don't go over with you I want you to
19 understand every term in here is very important, and you
20 can ask me a question about anything at all in here, so I
21 will go over it with you.

22 Then, at the end, I am going to ask you if
23 you have any other questions. All right?

24 THE DEFENDANT: All right. Thank you.

25 THE COURT: So, sir, I am starting on page

1 2, paragraph 2. Count 1 indicates — I'm sorry — this
2 paragraph indicates that Count 1 is for a violation of
3 Title 21 United States Code, Section 846, conspiracy to
4 distribute fentanyl and carfentanil in violation of Title
5 21 United States Code, Sections 841(a) (1), (b) (1) (A) and
6 802 (32) .

7 Sir, do you understand what you have been
8 charged with in that count?

9 THE DEFENDANT: Yes.

10 THE COURT: And then, sir, it sets forth the
11 statutory maximum. It says that the mandatory minimum
12 term is ten years. The maximum term of imprisonment is
13 life; the minimum fine is \$10 million dollars; maximum
14 \$20 million; minimum period of supervised release is five
15 years; maximum period of supervised release life.

16 Do you understand the statutory penalty?

17 THE DEFENDANT: Yes.

18 THE COURT: Count 13, sir, is for a
19 violation of Title 18, United States Code, Section
20 1956(h), conspiracy to commit money laundering in
21 violation of Title 18, United States Code, Sections
22 1956(a) (1) (B) 1 and 2.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And then, sir, it

1 states that the maximum term of imprisonment is 20 years;
2 the maximum fine is \$250,000; maximum period of
3 supervised release is three years.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Sir, the next paragraph says
7 that the sentence for the offense charged in Count 1 may
8 not be satisfied by a term of probation.

9 You understand that, do you not?

10 THE DEFENDANT: Yes.

11 THE COURT: And then, sir, let me discuss
12 with you paragraph 4. What this paragraph says is that
13 the Government has filed a notice, and they have set
14 forth one prior felony conviction, which changes the
15 mandatory minimum to 20 years, fine of \$20 million for a
16 minimum and a mandatory period of at least ten years of
17 supervised release with the maximum being life. I am
18 going to stop right there.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Then, it says that you are
22 agreeing or affirming that you were convicted of that
23 felony drug offense that is in the notice that the
24 Government has filed, and it is set forth in this
25 paragraph.

1 Understood?

2 THE DEFENDANT: Yes.

3 THE COURT: Then, it says that the
4 Government is agreeing that it will not file a second 851
5 enhancement, which would give you a mandatory term of
6 life.

7 Understood?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Paragraph 7, sir, is
10 a paragraph entitled "Forfeiture." It goes on to page 4,
11 page 5 and a couple sentences on page 6.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Then, sir, at the bottom of page
15 6, it sets forth the elements for Counts 1 and 13.

16 Do I need for me to go over the elements
17 with you?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Paragraph 13 states that
20 for Count 1 the Government must prove beyond a reasonable
21 doubt that two or more persons conspired or agreed to
22 violate federal drug laws; that you did it knowingly and
23 voluntarily.

24 You joined the conspiracy knowingly and
25 voluntarily, and the amount of carfentanil involved in

1 the conspiracy exceeded 100 grams.

2 Do you understand those elements?

3 THE DEFENDANT: Yes, but that's not true.
4 That's where I am — that's where I am — that's where I
5 am kind of —

6 THE COURT: Okay. Well, let me ask you
7 this, sir. I am going to jump ahead.

8 The appendix or the attachment, I should
9 say, to the plea agreement, do you see it there? It
10 starts after page 13, so it starts on page 14. Do you
11 see attachment A, factual basis for drug conspiracy, and
12 it goes over to page 20?

13 THE DEFENDANT: Yes, yes.

14 THE COURT: Did you have an opportunity to
15 read that?

16 THE DEFENDANT: Yes. And that's where I
17 seen that — I didn't like a lot that was stated, but I
18 am forced into a plea agreement.

19 THE COURT: No, no, no, no. You are not
20 forced into anything. If you want to go to trial, you
21 have that right.

22 THE DEFENDANT: But see, this is what I am
23 saying, your Honor, I was told like — cause I asked my
24 counsel for one thing and instead of being done, it is
25 like you got to go to trial, you know what I am saying?

1 I am saying no.

2 I know for a fact it wasn't a hundred grams
3 of carfentanil, and it is like they are forcing me into
4 saying it was a hundred grams of carfentanil and I asked
5 my counsel to test it because the Government had tested
6 it, and the Government says no, this is what it is, and I
7 know that it is not.

8 THE COURT: Okay. I am going to stop you
9 there.

10 So first of all, sir, I want you to
11 understand that if there is something you don't agree
12 with in here nobody is forcing you to accept it. You can
13 go — hang on, hang on — you can go to trial, so I don't
14 want to ever hear the word "force" because nobody is
15 forcing you.

16 This is what I am going to do. I am going
17 to turn to the Government lawyers. They have now heard
18 that you dispute the amount of carfentanil. Is that
19 right?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. I am going to ask them to
22 respond to that, and I want you to listen carefully to
23 what Mr. Bennett — because Mr. Bennett just stood —
24 what he has to say, okay?

25 THE DEFENDANT: Okay.

1 THE COURT: And then ultimately, if there is
2 a dispute as to the amount and there may be, you are
3 going to have to make a decision.

4 THE DEFENDANT: And see, my decision is
5 trial versus anything —

6 THE COURT: Right.

7 THE DEFENDANT: So, your Honor —

8 THE COURT: Right.

9 THE DEFENDANT: Okay. Well, you might be
10 right, but you got to go to trial.

11 THE COURT: Well, this is the problem. My
12 guess is that Mr. Bennett is about to say what evidence
13 he has that supports it. So he believes and Ms. Angeli
14 and the agent believe just as strongly that they can
15 prove that element as you believe they can't. So it is a
16 decision you have to make.

17 So let's listen to what he has to say about
18 — Mr. Gibson, let's listen to what evidence he has that
19 it is this amount, that the carfentanil exceeds a hundred
20 grams. Okay? Then we will talk some.

21 Mr. Bennett?

22 MR. BENNETT: Thank you, your Honor. I
23 think, as the Court is aware, several search warrants
24 were executed in this case back in February. During the
25 execution of one of the search warrants at Mr. Gibson's

1 daughter Dontaysha's apartment, which she shares with
2 Derrick Adams, there was located 28.8 grams of a white
3 powdery substance in a dresser drawer, and then there was
4 173 grams found in Mr. Adams' vehicle.

5 Testimony would be at trial that those drugs
6 were given to Ms. Gibson and Mr. Adams by Donte Gibson.
7 We also have the testimony that is all laid out here of
8 the various other shipments that came in, and it was a
9 mix of carfentanil and fentanyl that came in from China,
10 that was ordered over the dark web by Mr. Gibson and his
11 wife Audrey. So all of that would come in as well.

12 It has been sent off. I don't have the
13 actual lab report in front of me but has been provided to
14 defense counsel. I am pretty certain it went off to BCI,
15 was tested, and they have confirmed — and there will be
16 testimony at trial — that it was together combined 201.8
17 grams of fentanyl.

18 THE COURT: Ms. Kotnik?

19 MS. KOTNIK: Your Honor, I understand, I
20 think — he understands there is a conspiracy charge, and
21 if I understand you correctly, he is asking to be
22 accountable for what he did and not —

23 THE COURT: And many people get confused by
24 that, and if you are a member of a conspiracy and the
25 Government can prove you were a member of the conspiracy,

1 you are accountable for the full amount, even if you
2 didn't actually possess the full amount.

3 THE DEFENDANT: Okay. I understand what you
4 are saying, your Honor, but throughout the time, the last
5 time that I talked to you and today to speak, I asked for
6 my counsel to do a test as well as the Government do a
7 test on all I am being accountable of, and it never
8 happened.

9 So I am saying my counsel did a test, the
10 Government did their test, and it come back not what the
11 Government is saying. My levels wouldn't be this high.
12 You know what I am saying? I wouldn't be I am not as far
13 as in the Guidelines, and that's what I wanted to talk to
14 you about because it leaves me the word just go to trial.
15 Everything is go to trial.

16 So I don't mind taking my plea, but what I
17 am saying is, I would like for you to know where I am
18 lost at because it is like if I am asking to test what
19 the Government tests, so that it would be —

20 THE COURT: Okay. Let me stop you.

21 Ms. Kotnik, he is speaking of — I'm not
22 certain I understand a test, a test as to whether or not
23 it is carfentanil.

24 MS. KOTNIK: I believe he is asking to have
25 it retested.

1 THE COURT: It was tested.

2 MR. BENNETT: Yes, your Honor, it was tested
3 and what maybe Mr. Gibson needs clarification on is the
4 way the system works is, it has an amount of carfentanil
5 in the actual — the total amount.

6 Mr. Gibson would take a small amount of
7 carfentanil that they would bring in from China. We
8 intercepted 4.86 grams and a 5.05 grams of carfentanil.
9 But then, he would cut it with an agent that he used we
10 believe, and what the testimony would be, that he had
11 like a GNC product that he would take a smaller amount,
12 put it in the larger amount, and then sell it as that
13 larger amount.

14 So there may not — it may not be a 201.8
15 grams of pure carfentanil, but what we found has
16 carfentanil in it and was tested, so it was cut product
17 that they attempted to sell on the street. It was
18 rejected by the buyer, and then they had it back, but it
19 does have carfentanil in it.

20 So I think he needs to understand that's how
21 the quantities work. It doesn't have to be pure for it
22 to count as having carfentanil.

23 THE DEFENDANT: And see that's where I am
24 not getting — I know me just personally, I know that
25 like — you know, that's where my argument was.

1 THE COURT: Well, you know, sir, you don't
2 have to plead guilty. Hang on. That's what the
3 Government is going to present at trial. If you don't
4 think the jurors are going to accept the Government's
5 position, then you should go to trial.

6 THE DEFENDANT: But I am forced to go to
7 trial and get life.

8 THE COURT: That's right.

9 THE DEFENDANT: So it put me like at, it put
10 me in a bad situation.

11 THE COURT: Well, sir, I don't know if they
12 are putting you in that. They have negotiated a plea
13 bargain here, and you know, they are giving up something
14 with plea agreement and you give up something. You both
15 are saying we don't know what the jurors are going to do.

16 We don't — we are not willing to take the
17 risk of going to trial and seeing what a jury is going to
18 do. A jury may say "guilty," in which case you get life
19 because they are going to file another enhancement, or
20 the jury may say "Government, you haven't proven your
21 case beyond a reasonable doubt, so not guilty," which
22 means you will be a free man.

23 THE DEFENDANT: Right.

24 THE COURT: I will tell you this, first of
25 all, sir, please understand I don't care what you do. I

1 hope you realize that. I only care that what you do is
2 voluntarily and knowingly done. I don't care whether we
3 go to trial or not. I have to be here regardless.

4 I will say this to you. This is a C
5 agreement because you asked about that.

6 THE DEFENDANT: Okay.

7 THE COURT: What that means, the Government
8 and you through your lawyer have agreed to a 240-month
9 sentence, okay?

10 THE DEFENDANT: Okay.

11 THE COURT: Normally, I can do a couple of
12 different things. I can say today I accept your
13 agreement, period, which means no way would I give you
14 anything higher. Or I could refer your matter to the
15 Probation Department for a presentence investigation
16 report, and once I review it, I could say you know what?
17 I don't accept the 240 months, in which case we would
18 start over again, but I will tell you what I am going to
19 do for you.

20 I will commit today to the 240 months.
21 Normally, I don't do that. But — and I don't want you
22 to think that I am committing to it because I want you to
23 plead guilty, but I am hearing from you that you are very
24 concerned about the unknown.

25 THE DEFENDANT: Right.

1 THE COURT: So because of your concerns, I
2 am telling you that I will sentence you to the 240
3 months. I still have to refer it for the probation
4 department for a presentence report. I still have to
5 do that, but regardless of what comes back in that
6 report —

7 THE DEFENDANT: Okay.

8 THE COURT: — I will not say, oh, forget
9 it. I am not going to do the 240. If I tell you right
10 now on the record that you will be sentenced to 240,
11 that's what you will get no matter what the report says.
12 Now, I have to say it one more time, don't take that to
13 mean I care what you do.

14 THE DEFENDANT: Okay.

15 THE COURT: So if you want to have more
16 conversation with your lawyer, that's fine. I am going
17 to have to ask you if what the Government is alleging in
18 this attachment is true and accurate.

19 THE DEFENDANT: I am going to say yes and
20 no, but I —

21 THE COURT: Okay. Your yes and no I think
22 is exactly what Mr. Bennett said. There was carfentanil
23 but you are contesting it was not that full amount
24 because it was cut with something else. You don't
25 dispute the fact that when you put the carfentanil with

1 the cutting agent, that it was over 100 grams. Am I
2 right?

3 THE DEFENDANT: I am not disputing that,
4 your Honor, I am not disputing that.

5 THE COURT: Mr. Bennett, would you then
6 agree with me that that's an acceptable acceptance of the
7 factual basis?

8 MR. BENNETT: Yes, your Honor, I will.

9 THE COURT: Okay. That's fine. Any other
10 concerns about the factual basis?

11 THE DEFENDANT: No.

12 THE COURT: All right. If you want me to
13 stop, I will stop. It is up to you if you want to keep
14 going with the plea. I don't care, and I am not going to
15 be upset or angry or anything.

16 THE DEFENDANT: It is life, your Honor. I
17 mean, so yes, go ahead.

18 THE COURT: All right. Sir —

19 (Discussion held off the record.)

20 THE COURT: Sir, we had discussed the
21 elements. So you understand, the element the Government
22 must prove in paragraph 13, right? That's where we left
23 off.

24 THE DEFENDANT: Okay. Go ahead, Ma'am.

25 THE COURT: So you understand the elements?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. And sir, paragraph
3 16 talks about the specific sentence, the agreed sentence
4 and what my options are, but I told you, I am accepting
5 the 240 months. I am accepting your plea agreement.

6 So do you have any questions of me regarding
7 the C agreement?

8 THE DEFENDANT: Just say — hold on your
9 Honor.

10 (Discussion held off the record with
11 Ms. Kotnik and the Defendant.)

12 THE DEFENDANT: Okay. Go ahead, your Honor.

13 THE COURT: Okay. So sir, in the normal
14 case, it is my job to come up with a sentence that is
15 sufficient but not greater than necessary to satisfy the
16 purposes of sentencing.

17 THE DEFENDANT: I just need to know the
18 difference between 11(c) (1) (C) or whatever and 11(c) (A)
19 and (B) .

20 THE COURT: Good question. Normally, they
21 are (B) agreements, which means you only recommend things
22 to me here. This whole agreement would be we recommend
23 that you find the offense level to be whatever. We
24 recommend that you give three levels off for acceptance
25 of responsibility. A (C) agreement says, "Judge, once

1 you accept this agreement, you don't have a choice."
2 They are no longer recommendations. You are bound by
3 what's in here. That's the difference between a (B) and
4 a (C) agreement.

5 THE DEFENDANT: Okay. So (B) is more open
6 than (C)?

7 THE COURT: I'm sorry.

8 THE DEFENDANT: Are you saying (B) is more
9 open than (C)?

10 THE COURT: More open. Yes, a (B) agreement
11 is more open. It doesn't give you certainty. A (C)
12 agreement gives you certainty.

13 THE DEFENDANT: So basically, you could go
14 above with the (B).

15 THE COURT: A (B)? Oh, yes, yes.

16 THE DEFENDANT: You could go above with the
17 (B)?

18 THE COURT: Yes.

19 THE DEFENDANT: So a (C) is better than —

20 MR. BENNETT: Your Honor, if I might, in
21 this case, even his guideline range would be 235 to 293
22 months. So he is saving 50 months by getting the (C)
23 agreement at 240, and he is also eliminating the career
24 offender concern, which could be also 360 to life based
25 upon his situation.

1 So that's 30 years to life, so he has really
2 actually got a much better deal than his attorney has
3 negotiated for him by having a (C) agreement and locked
4 into the 240 months.

5 THE DEFENDANT: Okay. I understand what he
6 is saying, but the (B) agreement, could you feel the same
7 way with the (B) than the (C)?

8 THE COURT: Wait a minute. Wait a minute.
9 If this is a (B) agreement and what Mr. Bennett — if
10 Mr. Bennett is correct, you could be looking at 360
11 months up to life.

12 THE DEFENDANT: With the (B) agreement?

13 THE COURT: With a (B), a (B).

14 THE DEFENDANT: Okay, okay, okay.

15 THE COURT: And could I sentence you below
16 360? I could. Normally, I would give a guideline
17 sentence range, but I could go below, but I could go
18 above 360.

19 THE DEFENDANT: Okay.

20 THE COURT: Guideline ranges are advisory,
21 but they are important. If I go below or above a
22 guideline range, I have to explain my reasons for doing
23 that, whereas with a (C) agreement I don't have to
24 explain anything.

25 THE DEFENDANT: Okay.

1 THE COURT: So what Mr. Bennett is saying —
2 and you have to understand, Mr. Gibson, I don't really
3 know because I don't know your case the way your lawyer
4 and the Government's lawyer know it. I don't have the
5 presentence investigation report before me.

6 But Mr. Bennett is saying that your range
7 could either be 235 to 293 — again, it is advisory, but
8 it is very important — or it could be 360 to life. So
9 he is saying you are saving definitely some time by the
10 (C) agreement. I can't tell you if he is right or
11 wrong because I don't have anything before me to tell me
12 that.

13 THE DEFENDANT: Okay. Again, that's what I
14 was asking, like my level being 36, like that's extremely
15 high. 36, 37 is like 360 to life. How did I — what did
16 I do in my life?

17 THE COURT: What Criminal History Category
18 are you looking at, Mr. Bennett?

19 MS. KOTNIK: He's looking at — Judge, I
20 think he is looking at, if he was a career offender, he
21 would be a 37, Category VI, which would be 360 to life.

22 THE COURT: Correct. Otherwise — okay.
23 Sir, if you are consider deemed to be a career offender,
24 you would be at a total offense level of — one more
25 time.

1 MS. KOTNIK: 37 before responsibility so 37,
2 Criminal History Category VI.

3 THE DEFENDANT: I am at a 36, your Honor and
4 I wonder how am I at a 36.

5 THE COURT: Well, sir —

6 MR. BENNETT: Your Honor, I would say for
7 the record he has an aggravated assault conviction
8 previously back in 2002. He has a trafficking in heroin
9 conviction back in 2009, and then he has got this current
10 conviction.

11 So we are putting him on notice he may very
12 well — it is up to Pretrial Services, they make those
13 determinations — but we are letting him know he might be
14 a career offender, and he is running that risk by
15 avoiding by pleading to the (C) agreement.

16 THE DEFENDANT: And due to the probable
17 cause, what is the Guidelines for the reason why they
18 can't? That's the reason — see, where I am confused is,
19 the amount for the reason why they came —

20 THE COURT: What? I'm sorry. I didn't hear
21 you.

22 THE DEFENDANT: Well, they said like the
23 amount, the drug amount what I am looking at.

24 THE COURT: Sir, I am thinking you shouldn't
25 plead. I just don't think you really want to plead, and

1 that's fine.

2 THE DEFENDANT: But it is like my counsel
3 telling me I won't win so, I don't have a choice.

4 THE COURT: Well, sir, I think what she is
5 telling you what the evidence is that the Government is
6 going to present, and you have to look at that evidence,
7 and you need to make a decision whether you think you can
8 beat it.

9 Go ahead. Ask me your next question.

10 THE DEFENDANT: My thing was, when I look at
11 the complaint, the amount when they came, okay. They say
12 it was 48, it was 51. They said it was 4.5 and 5 grams.
13 When I look at that amount on this paper right here, it
14 is a difference. It is an analog or regular fentanyl.

15 MR. BENNETT: Your Honor, we did supersede
16 in this case. And in part, it was because there was 400
17 grams of a white substance that was found in a storage
18 facility that Mr. Gibson and his wife had rented.
19 Initially, that tested in the field for fentanyl. So he
20 was still going to be a (b) (1) (A) no matter what.

21 But when then we tested that, it came back
22 as it didn't have the drugs that were in it. So when it
23 went out to the lab, the BCI is saying the same with the
24 other. Then, what they assumed, the other drugs were
25 also going to be fentanyl, but when we sent it off to

1 BCI, the 201.8, when we sent it off to BCI, they came
2 back and said "no, this is actually carfentanil."

3 So I think that might be a part of his
4 concern, but the reality is either way when we initially
5 charged him, he was a (b) (1) (A), and then when we
6 superseded, he is a (b) (1) (A). The drug amount or
7 the drug amount, there is just nothing I can do about
8 it.

9 THE COURT: Did that answer your question,
10 sir?

11 THE DEFENDANT: No, not at all.

12 THE COURT: It did not.

13 Mr. Bennett, would you please listen to his
14 question again.

15 THE DEFENDANT: My question is this: It
16 states, if it is fentanyl, I have it right here.

17 THE COURT: Mr. Bennett, do you know what he
18 is referring to?

19 THE DEFENDANT: They have analog, if it is
20 analog, it says right here, if it is 10 grams but less
21 than 40 grams of fentanyl, which is the analog, 40 grams
22 but less than 160 grams, which is — that is why they
23 came. So on the complaint, it was a level 24 for the
24 drug amount that they actually raided for. It was a
25 level 24.

1 After they felt like they found more because
2 of them saying that it was a little bit of fentanyl, but
3 then the cut, they raised it to a 30. They raised it.
4 They are saying that it was a hundred grams but less than
5 300 grams of carfentanil. So they took my level from a
6 24 to a 30. I am like huh?

7 Now, they gave me two points for money
8 laundering and four points for saying that I was
9 either an organizer, leader, or manager, and now I am a
10 36.

11 And that's where my — I understand that it
12 is either trial, but I couldn't wait to see your Honor so
13 I could just get an understanding when it comes to that
14 because the case alone is a level 24 from the drug
15 amount, that when they said this is what you did, this is
16 why you going to jail.

17 So to see that — for me to do my own
18 homework and read and learn and to go from what I read
19 and learned to now seeing that the Government just — it
20 is like they bolstered me up from a 24 to a 36, that's a
21 lot.

22 THE COURT: Mr. Bennett?

23 MR. BENNETT: Your Honor, just for the
24 record, he is referring to the tables in 2D1.1, and I
25 think what he is referring to, what he is talking about,

1 the complaint, is the search warrant affidavit that was
2 also there as far as the complaint and arrest warrant and
3 the original before the search, that's what we were
4 looking at.

5 There were 40 some grams that came in
6 through the mail, and then there was another 50 grams
7 that came in through the mail. But at the time of
8 the search, we found an additional 201.8 grams of
9 carfentanil.

10 So that's why it is there. Nothing personal
11 against Mr. Gibson. I have no personal animus against
12 him. That's just the amount of drugs that were found.

13 THE COURT: Yeah. Mr. Gibson, you can't go
14 by what's in a complaint or — it is what the Government
15 today can prove, and according to the superseding
16 indictment, it sets forth what the Government claims they
17 can prove, and sir, if you don't think they can prove it,
18 then you shouldn't plead guilty.

19 MS. KOTNIK: And Judge, if I may and what I
20 explained to him, too, is, we were just not looking at
21 the Guidelines any more, too, because he has two
22 problems, the problem he is a career offender.

23 THE COURT: That's right.

24 MS. KOTNIK: And when 851 changed the
25 penalties that even took it to a higher level, so

1 guidelines themselves, although they are listed here,
2 might not really be an issue for us.

3 THE COURT: And the Guidelines aren't
4 applicable once I say — and I have already said it —
5 that I would agree to the 240 months. I still have to
6 refer it to the Probation Department, but no matter what
7 they come back, I am committing to 240 months, and sir,
8 there is nothing more I can say to me.

9 THE DEFENDANT: But you might feel like I
10 don't deserve 240 months.

11 THE COURT: You know what, sir —

12 THE DEFENDANT: You might feel that way.

13 THE COURT: — then you know what?

14 Don't plead guilty, but what I am saying to
15 you is, if there is a sentencing guideline range, it is
16 advisory, which means I don't have to go within that
17 range, but I have to come up with reasons why I go lower
18 or higher.

19 So if you want to take that chance, you
20 could take the chance by saying I don't want a (C)
21 agreement. Let's not lock me into a (C) agreement.
22 Let's do a (B) agreement. Or you could go to trial.

23 When I say that, I would ask the Government
24 if they would still go along with not filing that — hang
25 on listen, listen — I would ask the Government if they

1 would go along with not filing that second 851
2 enhancement and still allow you to do a (B) agreement as
3 opposed to a (C) agreement.

4 THE DEFENDANT: But each I'm —

5 THE COURT: No.

6 Mr. Bennett?

7 MR. BENNETT: Your Honor, I hate to throw a
8 monkey wrench in that, but I mean, we have filed a 851.
9 So he is still locked in at the mandatory minimum 240.
10 So by getting a (B) agreement, all her Honor can really
11 do is go higher.

12 THE COURT: Well, you know, you are
13 absolutely right. I forgot about that.

14 THE DEFENDANT: No way.

15 THE COURT: Sir, sir — Mr. Bennett, I
16 apologize that I lost sight of that because of the nature
17 of this conversation.

18 Sir, Mr. Gibson, I want you to really listen
19 to what I have to say next.

20 We have been talking about guideline ranges,
21 but because the Government has filed that 851
22 enhancement, he is right, even if I don't think you
23 deserve 240 months, I don't have a choice because that's
24 the mandatory minimum that Congress has said I must give
25 you, and I apologize that I lost sight of that.

1 So even if we did a (B) agreement, I am not
2 allowed to go lower. I am just not allowed. Could I go
3 higher? Yes. I could go higher in a (B) agreement, but
4 I can't go lower, and again, I want to apologize to
5 Ms. Kotnik and Government's counsel for losing sight of
6 that very important fact.

7 THE DEFENDANT: Your Honor, excuse me, your
8 Honor. So basically, you are saying, okay, the mandatory
9 minimum of the case is ten years, give me that, and then
10 you give me ten more years for the filing —

11 THE COURT: Mandatory minimum because the
12 Government has filed the enhancement, is 20 years.

13 Sir, you know what I will make this a little
14 bit easier for you. These are your options. You get 240
15 months. Or you go to trial, you are found guilty, I must
16 give you life even I don't want to. I don't have a
17 choice.

18 I must, assuming the Government, and they
19 said they are going to, file that second enhancement, or
20 you are found not guilty. So it is either 240 months,
21 life if you are guilty; you walk if you are not guilty.
22 That's it. Guidelines don't even matter.

23 THE DEFENDANT: That's the bottom line.
24 That's just the bottom line.

25 THE COURT: That's the bottom line.

1 THE DEFENDANT: Okay. Go ahead with the
2 proceeding.

3 THE COURT: Okay. So sir, what I am saying
4 to you is, in the normal case, I look at a bunch of
5 different factors in order to come up with a sentence.
6 Honestly, they are not relevant here because there is a
7 mandatory minimum, and the Government has agreed to the
8 mandatory minimum.

9 So normally, I would look at the
10 seriousness, which is what you want me to do, look at the
11 seriousness of the offense, look at the personal history
12 and characteristics, look at the issues of deterrence,
13 protecting the public, rehabilitation, disparity in
14 sentencing; look at the advisory Sentencing Guideline
15 range. None of that is relevant. When you are facing a
16 mandatory minimum of 240 months — and I am making the
17 commitment to you that I will not go above 240 months.

18 THE DEFENDANT: Go ahead, your Honor.

19 THE COURT: I'm sorry?

20 THE DEFENDANT: Go ahead.

21 THE COURT: All right. You understand all
22 that so far?

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay. So sir, paragraph 18 and
25 19 set forth the stipulated guideline computation, and

1 the acceptance of responsibility, but again, it is not
2 relevant because I am not going to give you anything
3 above the mandatory minimum.

4 Understood?

5 THE DEFENDANT: So what you are saying,
6 basically none of this matters.

7 THE COURT: Yes. Sir, you know when it
8 matters is, if I don't make the commitment to the agreed
9 sentence, and because you have asked good questions here,
10 you want to know everything, and I respect that. I
11 respect that.

12 I just feel like you so want some certainty,
13 that that's why I am not doing my normal practice, and I
14 am saying to you, I am going to take the 240, even, even,
15 sir, if I get the presentence report back and I go, he
16 deserves more than 240. You are getting 240, period.

17 THE DEFENDANT: All right. Thank you.

18 THE COURT: Paragraph 21, sir, basically
19 states that you are giving up your right to appeal your
20 conviction or sentence and to challenge your conviction
21 or sentence collaterally through a post-conviction
22 proceeding. However, you do reserve the right to appeal
23 any punishment in excess of the statutory sentence
24 maximum or any sentence in excess of 240 months, but I am
25 not going to give it to you, so that's not even relevant.

1 And then, sir, you understand that paragraph though,
2 right?

3 Do you want me to go over that again?

4 THE DEFENDANT: Yes, one more time.

5 THE COURT: Sure. This paragraph says that
6 you are giving up your right to appeal your conviction or
7 sentence and to challenge your conviction or sentence
8 collaterally through a post-conviction proceeding.
9 However, you are permitted to appeal if I give you a
10 sentence higher than the statutory maximum or a sentence
11 higher than 240 months.

12 THE DEFENDANT: Yes, I understand. But you
13 said you are not going to do that, though.

14 THE COURT: Right.

15 And then, sir, at the bottom of page 10,
16 there is a factual basis and relevant conduct, we already
17 addressed that with the attachment.

18 So is there anything I haven't explained to
19 you, anything else that you want to discuss?

20 THE DEFENDANT: No. But did you get my
21 letter?

22 THE COURT: I'm sorry?

23 THE DEFENDANT: Did you get my letter?

24 THE COURT: I did. I have it right here.

25 (Indicating.)

1 THE DEFENDANT: Okay. Thank you.

2 THE COURT: And I read it.

3 THE DEFENDANT: And you read it?

4 THE COURT: Of course, of course.

5 Absolutely. I read everything I get.

6 Sir, before I ask how you plead, would you
7 like to have a conversation with Ms. Kotnik? Any more
8 time with her?

9 THE DEFENDANT: Yes, one second.

10 (Discussion held off the record between
11 counsel and Defendant.)

12 THE DEFENDANT: Okay, Ma'am.

13 THE COURT: All right. Any more questions
14 of me?

15 THE DEFENDANT: You did an excellent job,
16 your Honor.

17 THE COURT: Sir, thank you.

18 Sir, do you understand and do you believe
19 that I don't care what you do here?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand the only thing
22 I care about is that you make your plea knowing
23 everything.

24 Do you believe that?

25 THE DEFENDANT: Yes, yes.

1 THE COURT: All right. Knowing all that I
2 have just outlined for you, how do you plead to Count 1
3 of the superseding indictment?

4 THE DEFENDANT: Guilty.

5 THE COURT: And Count 13.

6 THE DEFENDANT: Guilty.

7 THE COURT: And in making this plea of
8 guilty, do you understand that no one can make any
9 promises for me as to what I am going to do in your
10 case?

11 THE DEFENDANT: Yes.

12 THE COURT: Has anyone made any promises to
13 you other than what you have heard here in open Court, or
14 has anyone threatened you to convince you to plead?

15 THE DEFENDANT: No.

16 THE COURT: Is your plea voluntarily made
17 and of your own free will?

18 THE DEFENDANT: Yes.

19 THE COURT: I do, in fact, find there to be
20 a factual basis for your plea of guilty. I accept your
21 (C) plea agreement, and I accept the 240 months agreed
22 sentence, and I accept your plea of guilty to Counts 1
23 and 13. Even though I — you know, I am giving you the
24 240 months, I still must refer your matter to the
25 Probation Department for a presentence investigation

1 report.

2 THE DEFENDANT: Okay. Can I —

3 THE COURT: I still have to do that.

4 THE DEFENDANT: Will I get a copy of that.

5 THE COURT: Yes, yes. Your sentencing date
6 is, Mary?

7 JUDICIAL ASSISTANT: January 16th at 11:30
8 in the morning.

9 THE COURT: Ms. Kotnik, is that date and
10 time convenient?

11 MS. KOTNIK: Yes, your Honor. January 16th
12 at 11:30.

13 THE COURT: Mr. Bennett, Ms. Angeli?

14 MR. BENNETT: Yes, your Honor. We are both
15 available on that day.

16 THE COURT: Sir, you will be back here
17 January 16th at 11:30 in the morning for sentencing.

18 THE DEFENDANT: All right. Thank you.

19 THE COURT: And again, sir, no matter what
20 that report says, I will not go back on my word.

21 THE DEFENDANT: All right. Thank you.

22 THE COURT: We have it on the record. Your
23 lawyer can always get a copy of the transcript, but
24 that's not who I am. I am giving you have my word. All
25 right?

1 THE DEFENDANT: All right. Thank you.

2 THE COURT: Ms. Kotnik, is there anything
3 further?

4 MS. KOTNIK: Just when appropriate, he would
5 like to have contact with his wife and his son-in-law,
6 right now their cases are still pending but when
7 appropriate, if he is able to contact them.

8 MR. BENNETT: We haven't had everyone plead
9 at this point.

10 THE COURT: Now is not appropriate, but when
11 appropriate, you won't have a problem?

12 MR. BENNETT: No.

13 THE DEFENDANT: Like in the jail, they have
14 me and Adams separated, and there is no need to be
15 separated.

16 Could they take the separation off me and
17 Adams at the jail?

18 THE COURT: Well, I think what Mr. Bennett
19 is saying, once the co-Defendant pleads guilty or goes
20 to trial, then he is not going to have a problem with
21 that.

22 MR. BENNETT: Yes, your Honor.

23 THE COURT: But until there is a plea of
24 guilty or a finding of guilt, you are objecting?

25 MR. BENNETT: Yes. We would request they

1 remain separate per the detention orders.

2 THE COURT: Do you understand, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: But let's assume — and I have
5 no idea — let's assume for the sake of argument the
6 co-Defendant pleads guilty, you won't wait for sentencing
7 before agreeing to the —

8 MR. BENNETT: No, your Honor. As far as we
9 know, there is no animus between Mr. Adams and
10 Mr. Gibson, so we would have no concerns.

11 THE COURT: Okay. So sir, if — and I have
12 no idea — if he pleads guilty, we will take away that
13 separation order. We won't wait for January or February
14 for a sentencing.

15 THE DEFENDANT: All right. Thank you.

16 THE COURT: All right. And so, Ms. Kotnik,
17 anything else?

18 MS. KOTNIK: No, your Honor. Thank you.

19 THE COURT: Mr. Bennett, Ms. Angeli?

20 MR. BENNETT: Nothing on behalf of the
21 Government.

22 THE DEFENDANT: Another, too, my daughter,
23 what about my daughter? Can she come see me now that I
24 am able to I plead out?

25 MS. KOTNIK: Once her case is resolved.

1 THE COURT: Same thing, Mr. Bennett?

2 MR. BENNETT: Yes. We should be close with
3 that one, your honor.

4 THE COURT: Once her case is resolved, the
5 answer is yes.

6 THE DEFENDANT: Her case will be over soon.

7 THE COURT: Yes.

8 THE DEFENDANT: All right. Thank you. You
9 are all set, Mr. Gibson. I will see you in January.

10 (Hearing concluded at 12:55 p.m.)

11 - - - - -

12

13 C E R T I F I C A T E

14 I, George J. Staiduhar, Official Court
15 Reporter in and for the United States District Court,
16 for the Northern District of Ohio, Eastern Division,
17 do hereby certify that the foregoing is a true
18 and correct transcript of the proceedings herein.

19

20

21

22 s/George J. Staiduhar
23 George J. Staiduhar,
Official Court Reporter

24

25

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